Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

ROSEANN CLARK and JOSEPH CLARK, and INFANT NICHOLAS CLARK and MICHAEL CLARK, by their mother, ROSEANN CLARK,

Petitioners,

vs.

CLARKSTOWN CENTRAL SCHOOL DISTRICT, and HELEN O'CONNOR, individually and in her official capacity as an employee of the CLARKSTOWN CENTRAL SCHOOL DISTRICT, ARCHDIOCESE OF NEW YORK, ST. AUGUSTINE SCHOOL, HELEN BOYCHAK as Principal of St. Augustine School, and as employee of ARCHDIOCESE OF NEW YORK,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION FOR RESPONDENT HELEN O'CONNOR, ETC.

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QUESTION PRESENTED

Whether certiorari should be granted where the district court properly granted summary judgment, pursuant to Fed. R. Civ. P. 56(c), finding no genuine issue of material fact, thereby, entitling Respondents to judgment as a matter of law.

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OPINIONS BELOW

On January 31, 1995, the Honorable Charles L. Brieant, United States District Court for the Southern District of New York, issued an order granting the motions of all Respondents for summary judgment, pursuant to Fed. R. Civ. P. 56(c), finding no genuine issue of material fact, thereby dismissing all federal claims as well as pendent state claims.

Petitioners appealed from said order and on October 13, 1995, the United States Court of Appeals for the Second Circuit denied Petitioners' appeal finding that all Respondents had acted with "reasonable cause" and that no genuine issue of material fact existed.

A copy of the original judgment of the district court as well as the order of the Court of Appeals is already set forth in Petitioners' appendix.

The verbatim transcript of the oral decision of the Honorable Charles L. Brieant, United States District Judge, is set forth in Respondent's, Clarkstown Central School District, appendix

STATEMENT OF THE CASE

Respondent, Helen O'Connor, (hereinafter referred to as "Mrs. O'Connor"), is a registered nurse licensed by the State of New York and had been employed by the Clarkstown Central School District, (hereinafter referred to as "District"), for approximately sixteen years prior to the events contained in the complaint.

From 1981, Mrs. O'Connor had been assigned as a school nurse to the Roman Catholic elementary school, St. Augustine,

which is operated by Respondents, Archdiocese of New York, hereinafter referred to as "Archdiocese". Under New York law, a school district is required to provide a registered nurse, on a full time basis, to every school within its jurisdiction.

It is undisputed that New York State has enacted certain laws with respect to the prompt reporting and handling of child abuse situations. Those statutes are codified under New York's Social Services Laws § 413 *et seq*. The constitutionality of New York's Social Services Laws *have not been challenged* by Petitioners in these proceedings.

The precise language of the Social Service Laws is set forth in Respondent District's appendix.

It is undisputed that under Social Service Law § 413(1), school nurses, as well as other professional individuals, are required to report or cause a report to be made when they have "reasonable cause" to suspect that a child may be abused or maltreated. Under Social Service Laws § 419, a school nurse making such a report of suspected child abuse in "good faith" is entitled to immunity from both civil and criminal liability. Most importantly, a school nurse who failed to report an appropriate child abuse situation would face criminal penalties as well as civil penalties under Social Service Laws § 420.

Petitioners, Roseann Clark and Joseph Clark, Sr., enrolled their three children at St. Augustine's school. The eldest, Joseph, Jr., Michael, and the youngest, Nicholas. Over a three year period, Mrs. O'Connor had become aware of a pattern of injuries and situations which had befallen two of the Clark children.

This began on June 21, 1989, when Mrs. O'Connor was advised by the teacher of Joseph, Jr. as well as the principal of the

school that they both had observed Joseph, Jr. arrive in the school with what appeared to be the remnants of a large handprint on his face. The principal instructed Mrs. O'Connor to make a note of that situation in the child's medical file and she did. On March 4, 1991, the same child, Joseph, Jr., had arrived at the school in the company of his parents for a meeting with the principal concerning a "mooning" incident in which Joseph, Jr. had been involved previously on a school bus. At that time, Joseph, Jr. had a large black eye. Following that meeting, Joseph, Jr. came into Mrs. O'Connor's nurse station at the school and complained of pain from the black eye. Joseph, Jr. advised that he had received this injury while involved in a sporting event with a cousin from Staten Island, New York. Mrs. O'Connor made notes in his medical records concerning this event.

Finally, on September 16, 1991, the youngest Clark child, Nicholas, was observed in school with a large black eye accompanied with serious swelling. Mrs. O'Connor asked Nicholas how he received the black eye and he explained that he was playing a sporting event with a cousin from Staten Island, New York. The statement of Nicholas was almost the exact excuse which had been provided by his oldest brother, Joseph, Jr., just six months earlier.

Based upon the deposition testimony of the Petitioners, it is undisputed that Joseph, Jr. had suffered the black eye in March of 1991 and that it was in very close proximity to the "mooning" incident. Further, it is undisputed that the youngest child, Nicholas, had the black eye in September of 1991. There was no controversy concerning the fact that both children stated they received those injuries as a result of playing with a cousin from Staten Island, New York.

Based upon this pattern of incidents concerning the Clark children, Mrs. O'Connor approached the new principal of the

school, Respondent, Helen Boychak, and advised her of the latest incident involving young Nicholas as well as the previous incidents involving Joseph, Jr.

After considering this situation for a period of time, Principal Boychak questioned both Nicholas as well as the middle brother Michael who was also a student in the school. Both children indicated that Nicholas received the black eye while playing with a cousin from Staten Island, New York. The oldest child, Joseph, Jr., had previously graduated from St. Augustine School that past June and was no longer available to be questioned by the principal.

Principal Boychak called the 1-800 hotline number in New York for child abuse situations. She made that call in the presence of Mrs. O'Connor, and, Principal Boychak related the history of events to the spokesperson for New York's Child Protection Agency and inquired as to whether or not this was the type of situation which should be reported. Principal Boychak was advised that this was a situation which required a report and the principal was advised to call a local number for the Rockland County Child Protection Services and discuss the situation directly with them.

Principal Boychak made that follow up call and shortly thereafter a representative from CPS came to investigate the situation at the school. That investigator, spoke briefly with Principal Boychak and with Mrs. O'Connor and then separately interviewed Nicholas Clark and Michael Clark. Following those interviews, the investigator left and did visit the home of the Clark family that evening and made inquiries of both Roseann Clark and Joseph Clark, Sr.

That investigation went forward for approximately six months time when it was finally closed as "unfounded". None of

the Respondents were involved in the CPS investigation. Shortly thereafter, the Petitioners commenced the federal action in the United States District Court for the Southern District of New York with a complaint alleging some 33 counts of a variety of civil rights claims as well as pendent state law claims.

In essence, the complaint alleged that the various Respondents violated constitutional rights of these Petitioners by initiating child abuse investigations without "reasonable cause" and had in fact done so with malice, gross recklessness and wilful misconduct.

Ultimately, the District commenced a third party action against Respondents' Archdiocese. Full and lengthy disclosure and discovery proceedings were conducted. Upon the conclusion of discovery, motions were filed by all the Respondents seeking summary judgment.

The motions and the accompanying exhibits were extensive and included some thirteen deposition transcripts to be reviewed by the district court. On January 27, 1995, the Honorable Charles L. Brieant, heard oral argument from all parties and granted summary judgment dismissing all federal claims with prejudice and dismissing all pendent state claims without prejudice. The verbatim transcript of the decision of the Honorable Charles L. Brieant, including his findings of fact and law, are annexed to District's appendix.

Petitioners then appealed to the United States Court of Appeals for the Second Circuit asserting that there were numerous material issues of fact to be resolved. The Second Circuit unanimously affirmed the ruling of the district court finding that Respondents had "reasonable cause" to suspect child abuse and that the actions of the Respondents had not violated any constitutional rights of privacy.

Petitioners have made numerous misstatements of fact and most have been corrected in the briefs of Respondents' District and Archdiocese. However, two additional misstatements should be addressed. On page "14" of the original petition, Petitioners' counsel suggests that Mr. Clark's employment suffered as a result of this situation since as a police officer he was later cross-examined by attorneys for persons arrested by him and the issue of the child abuse allegations were brought out in efforts to damage his credibility. Petitioners' counsel is quite incorrect in making such allegations in this petition especially in view of the fact that Joseph Clark, Sr. has already testified, under oath, that he had been listed as disabled and was no longer an active police officer since 1988 which is some three years prior to the incidents related in the complaint. Mr. Clark was no longer making arrests or being cross-examined.

Further, Petitioners' counsel stated on page "13" of the petition that Joseph Clark, Sr.'s employment suffered because he was subject to an internal departmental investigation by the chief of police. Such is simply not the case since Mr. Clark was no longer a police officer and was never formally questioned by the chief of police concerning this situation. Again, in the deposition of Mr. Clark, he explained that he was present with the chief of police during a three hour negotiation session for salary raises for the officers of the department since Mr. Clark was still an official of the union and a negotiator acting on behalf of the police union. It was only at the close of the negotiation session that the chief happened to inquire of Mr. Clark whether everything was all right at home. Such an encounter can hardly qualify as an internal affairs inquiry.

REASONS FOR DENYING THE WRIT

Respondent, Mrs. O'Connor submits that *no compelling* reasons exist in support of a grant of this petition.

The New York Court of Appeals has not decided any *important federal question* which conflicts with any other state court or of a United States Court of Appeals.

The order of the Court of Appeals for the Second Circuit affirming the grant of summary judgment *does not conflict* with any decisions of other United States Courts of Appeals or conflicts in any way with decisions of New York's Court of Appeals.

Further, the original decision of the district court granting summary judgment as well as the order affirming that decision *does not raise any important questions* of federal law that need be resolved by this Honorable Court.

This case merely relates to the granting of summary judgment upon a finding of the lack of the existence of any *material issues of fact* and such a ruling should remain undisturbed.

Neither the Constitution of the United States of America nor the Constitution of New York State or any of its respected principles are implicated by the granting of summary judgment on behalf of the Respondents.

Petitioners are not challenging the constitutionality of New York's Social Services Laws nor are they challenging the "reasonable cause" standard contained in those statutes. Petitioners fully concede that potential child abuse events must be viewed as they were at the time an investigation is initiated

rather than after the investigation has been concluded. Petitioners cannot point to any decision of this Honorable Court or any other appropriate decision of any United States Court of Appeals which is in conflict with the grant of summary judgment in this matter.

Petitioners raise as an issue that a family should have a constitutionally protected liberty interest to be free from child abuse investigations absent "reasonable cause" to suspect potential abuse. Such an issue need not be addressed by this Honorable Court since it has already been determined, as a matter of law, that all Respondents possessed the necessary requisite for "reasonable cause" to suspect potential abuse in this situation. In effect, *Petitioners actually seek an inappropriate review of the findings of fact.* The district court properly determined and the Second Circuit Court of Appeals properly affirmed that Respondents produced sufficient evidence to find that the actions of the various Respondents were undertaken *in good faith and based upon reasonable cause.* It was properly determined after a complete review of the extensive records submitted by Respondents that their actions did not amount to wilful misconduct, bad faith or gross negligence.

Petitioners failed to demonstrate that Respondents' actions violated any constitutionally protected rights, and, Petitioners utterly failed, then and now, to demonstrate the existence of any material issues of fact sufficient to disturb the appropriate granting of summary judgment.

In New York, as in many other states, it had become public policy to improve efforts to identify potential abusive situations in the hopes of improving early detection. It has been noted that the

> . . . importance of rapidly detecting and

> addressing instances of evil as pernicious as child abuse cannot be overstated.

Statler v. Larsen, 131 A.D.2d 125, 520 N.Y.S.2d 378, at 382 (1st Dept. 1987).

Toward that end, the New York Legislature requires certain professionals to register reports whenever they have cause to suspect that a child is maltreated or abused. *Title 6, Child Protective Services, Social Services Law*, § 411 *et seq.*, McKinney's Consol. Laws, book 52A, 1992. The very essence of the law recognizes that abused children are in urgent need of effective child protective services.

Section 413 provides a listing of various professionals who are required to report instances of suspected abuse. A registered nurse is one of those listed in the section as a mandated reporter of abuse. The section further provides:

> . . . . Whenever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, *school*, facility or agency, he or she shall *immediately notify the person in charge of such institution, school*, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made.

(Emphasis provided). Social Services Law, § 413 (1), McKinney's Consol. Laws (1992).

So important is the effort to identify abusive situations that the New York Legislature provided that any person failing to

report suspected abuse is guilty of a class A misdemeanor, and, is also civilly liable for the damages. Social Services Law, § 420.

Reports of suspected abuse need not await conclusive evidence to verify the abusive condition. *Kempster v. Child Protective Services,* 130 A.D.2d 623, 515 N.Y.S.2d 807, at 809 (2nd Dept. 1987); *Isabelle v. City of New York,* 150 A.D.2d 312, 541 N.Y.S.2d 809, at 810 (1st Dept. 1989).

To promote more complete and timely reporting of suspected abusive situations, the New York Legislature provided immunity to those mandated reporters. Such immunity attaches whenever there is reasonable cause to suspect an abusive situation and whenever the mandated reporter acted in good faith in discharging the obligations and duties imposed by the statute. *See, Kempster, supra.*

Section 419 provides, in pertinent part:

> Any person, official or institution participating in good faith in . . . ,the making of a report, . . . shall have immunity from any liability, civil or criminal, . . . the good faith of any person, official or institution required to report cases of child abuse or maltreatment . . . shall be presumed, provided such person, official or institution was acting in discharge of their duties and within the scope of their employment, and such liability did not result from the willful [as in the original] misconduct or gross negligence of such person, official or institution.

Social Services Law, § 419, McKinney's Consol. Laws (1992).

Even in jurisdictions lacking a local statute such as New York's Social Services Law, the United States Court of Appeals, for the Seventh Circuit, held that school personnel and a social worker who removed a young girl from her class and questioned her and physically examined her for evidence of child abuse were entitled to qualified immunity and dismissed claims brought under 42 U.S.C. § 1983 as well as state pendent claims. Such immunity extended to subsequent questioning of the child's sister about potential abuse even after the father voiced objections. *Landstrom v. Illinois Department of Children and Family Services*, 892 F.2d 670 (7th Cir. 1990).

In matters involving potential child abuse investigations, the federal courts have recognized that reporters of abuse are entitled to qualified immunity in actions under 42 U.S.C. § 1983. *Robinson v. Via*, 821 F.2d 913 (2nd Cir. 1987); *Cecere v. City of New York*, 967 F.2d 826 (2nd Cir. 1992); *Chayo v. Kaladjian et al.*, 844 F. Supp. 163 (S.D.N.Y. 1994).

In the matter before this Honorable Court, Mrs. O'Connor was entitled to summary judgment for any claim of violation of civil rights under 42 U.S.C. § 1983 under, both, the federal standard as well as under the state standard as proscribed under Social Services Law § 419.

There can be no dispute that Mrs. O'Connor, as a registered nurse and school employee, is in fact a *mandated reporter* of suspected abusive situations pursuant to the Social Services Law. Further, she would be criminally and civilly liable for a failure to report a suspected case.

Also, there is no dispute that Mrs. O'Connor notified the principal of St. Augustine school, Sister Boychak, and that pursuant to the Social Services Law, § 413, Sister Boychak, as

the person in charge of the school became responsible to notify and did notify the Child Protective Service.

Further, there is no dispute that Mrs. O'Connor was an employee of the Clarkstown Central School District and that she became aware of the various past episodes of injuries to the Petitioners' children as a result of her employment and assignment to St. Augustine school and was acting within the proper scope of her authority when she notified the principal of the latest incident involving a Clark child.

Consequently, under the standard provided in *Title 6- Child Protective Services, Social Service Laws,* § 413 *et seq.*, Mrs. O'Connor is entitled to qualified immunity from civil litigation. Additionally, the good faith of her actions must be presumed as there is no evidence to suggest that her actions rose to a level of wilful misconduct or gross negligence.

Under the federal standard, the test of reasonableness is an objective one and the defense of qualified immunity properly lends itself to summary disposition of the various claims under 42 U.S.C. § 1983 against Mrs. O'Connor.

Additionally, there is no real dispute that Mrs. O'Connor, as the school nurse, was reacting to a collective group of incidents involving the Clark children and not responding to one lone incident involving the black eye of the youngest Clark child.

The evidence is conclusive, through testimony and admissions of the Petitioners, that Nicholas Clark, an infant, arrived at school with a black eye on September 16, 1991. It is further undisputed that Nicholas explained that he received the black eye as a result of playing with a "cousin" from Staten Island.

On June 21, 1989, Nicholas's older brother, Joseph, was observed arriving at school with the remains of a handprint on his face. This is confirmed by the uncontested deposition testimony of Joseph's teacher, Mrs. Barile. Although Mrs. O'Connor did not observe the handprint, she was told of it by both the teacher, Mrs. Barile and the then principal of St. Augustine school. She properly made a record of the event and placed it into the child's school medical record. That record was marked as an exhibit in the underlying litigation.

It is further undisputed that on March 4, 1991, young Joseph was observed leaving the principal's office in the company of his parents and Joseph had a black eye. He went to the nurse's office and explained to Mrs. O'Connor that he received the black eye playing with a "cousin" from Staten Island. It is undisputed that this was the same "cousin" his younger brother, Nicholas, would identify six months later as the source of his black eye. Again, she made a record of these incidents as well as Joseph's explanation in the child's school medical records. These records were also marked as exhibits in the underlying litigation.

It is also undisputed that Joseph had been involved in a prior "mooning" prank on a school bus. Mrs. O'Connor did not witness that prank and became aware of it when she overheard several teachers describe the incident and also mention that they did not want to tell Joseph's father of the incident as he had a reputation for heavy handedness. This episode occurred just a few days before Joseph arrived at school with his black eye. In fact, his parents had been notified of the "mooning" incident and they had to appear at school for a meeting with the principal. It was following this meeting that young Joseph went to the nurse's office with the black eye.

By September 16, 1991, when young Nicholas arrived in school with his black eye, Mrs. O'Connor was now aware of

several incidents involving the Clark children. She was aware of the handprint on Joseph's face, Joseph's "mooning" incident followed closely by the black eye and now his youngest brother, Nicholas, arrived at school with a black eye. To add to this growing pattern, Nicholas gave almost an identical explanation to the nurse as his oldest brother had given just months earlier.

Based upon this collective group of undisputed events, Mrs. O'Connor concluded that a potential abusive situation might exist and she fulfilled her obligation by informing the new school principal, Sister Boychak, of this current event and all the past instances.

Such a conclusion by Mrs. O'Connor was surely reasonable under the circumstances. Faced with these circumstances, and mindful of her obligations to report potential abusive situations, the decision of Mrs. O'Connor to inform the school principal of the past and current events was objectively reasonable and no rational jury could find otherwise.

Furthermore, this was the first experience Mrs. O'Connor encountered in reporting a potential abusive situation to the school principal. It was not for her to investigate the details of this situation, that was left for the professional investigators of the Child Protection Service.

It is undisputed that Respondents did not examine and photograph the children. Any interview or examination was conducted by the investigator from CPS and Respondents were properly not a party nor present for that investigation.

Petitioners simply refuse to acknowledge that it was established that there was a *pattern* of instances and circumstances which formed the basis of the action taken by

Respondents. Perhaps Judge Brieant best recognized the importance of this ongoing pattern during oral argument when he observed that the latest incident of a black eye should be judged in light of the prior facts known or believed at the time. Judge Brieant correctly grasped the situation in stating *"its like the story of Robinson Crusoe. When they found a second footprint, they were pretty sure there was a human being on the island."*

The lower courts were correct in determining that no significant issues of disputed material facts existed and correctly dismissed the claim. Judge Brieant properly focused on the main issue of the constitutional claims which alleged that the report of the Respondents was undertaken without just cause or with gross negligence or in bad faith and without adequate training. It is obvious from the decision of Judge Brieant that the court took the time to review the large submission of papers as well as the numerous deposition transcripts which were provided.

Respondents had reasonable cause to suspect child abuse based upon the prior knowledge of previous instances either though personal knowledge or through verified hearsay concerning the Clark children. While each episode may not have been perceived, in and of itself, as a basis to support a report, it was the *cumulative* knowledge of these various instances which could not be ignored. It was this very *pattern* which supported the finding of reasonable cause.

Judge Brieant also correctly noted that there were other incidents involving the oldest child, Joseph, based upon deposition testimony of teachers concerning poor behavior at school and poor grades and noted that the "mooning" incident merely added to the pattern of behavior which is generally perceived as consistent with neglect or child abuse.

Reasonable cause had been described as a situation where a

reasonable person either observes or is made aware of an incident *where it is possible* that such an injury was caused by non-accidental means. Based upon the pattern associated with the Clark children it was quite reasonable to conclude that these similar injuries might *not have been* caused by accidentally playing with a "cousin from Staten Island". It is also beyond comprehension that the acts of the Respondents could be viewed as either wilful misconduct and/or gross negligence.

Child abuse and neglect are unfortunate and despicable acts which appear to be prevalent in our current society. New York has an obligation to safeguard the interests and the welfare of children, who due to their tender age and lack of sophistication have no ability or limited ability to protect themselves. Children have no real voice or champion to protect them from parental abuse. New York is not a minority in enacting such legislation consistent with the Social Services Laws designed to protect children from such abuse or neglect.

Those important public policy considerations far outweigh, and must outweigh, any rights of parents to be protected from legitimate inquiries by the Child Protective Services based upon reasonable reports initiated by school officials. New York wisely identified numerous professions which could normally be expected to come in contact with children and be in a position to observe a child and hopefully identify an abusive or neglectful situation as early as possible. Neither the legislation nor the decisional law of New York require a mandated reporter to independently investigate or verify their suspicions. New York wisely left that process to the expert professionals associated with the Child Protective Services agency.

Respondents, designated as mandated reporters of potential abuse, are placed in a very delicate and difficult situation. They *must report* their suspicions of abusive situations and they may

be held criminally and civilly *liable* if they fail to report such suspicions. This requirement subjects these mandated reporters to scrutiny always based upon hindsight. If a mandated reporter fails to report a close situation then that individual might be subjected to civil and criminal liability if facts later determine that an abusive situation actually existed.

Likewise, a mandated reporter may face civil rights litigation and accusations if the basis of the report is later determined to be unfounded as in this case. To permit such civil rights claims against Respondents will have a chilling effect on the future decisions of mandated reporters and tend to dilute the importance of valuable legislation which is designed to identify, treat and hopefully salvage a young life.

Based upon the facts and circumstances and evidence brought before the District Court, Judge Brieant correctly concluded that there was absolutely no material issues of fact to be resolved and that it was quite proper to dismiss the complaint. Likewise, the Second Circuit Court of Appeals appropriately and unanimously affirmed.

CONCLUSION

Petitioners' Writ of Certiorari should be denied.

Respectfully submitted,

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